

Questions and Answers

January 24, 2002

CANADIAN SOFTWOOD LUMBER

CVD case #: C-122-839

AD case #: A-122-838

The following paper, in a Question and Answer format, (Q&A) addresses various issues in order to clarify Customs administration of the Scope of the subject AD and CVD cases.

NOTE 1: If there is a disagreement with a scope issue, an importer may file an application with the Department of Commerce, under 19 CFR 351.225, for a scope determination on a particular product.

QUESTIONS AND ANSWERS

PART I

1. Q. Are AD/CVD duties applicable to softwood lumber manufactured in Canada from U.S. logs?

A. Yes. The manufactured lumber is a product of Canada. Such lumber is not exempt by the AD/CVD preliminary determination.
2. Q. Is U.S. softwood lumber sent to Canada for further processing, specifically planing, sanding, kilning and drying (KD), cutting to size and similar finishing processes, subject to AD/CVD duties?

A. Yes. Two questions have to be addressed in situations where the applicability of subheading 9802.00.50, HTSUS, is at issue. First, is subheading 9802.00.50, HTSUS, applicable? Second, has the lumber been transformed into a product of Canada?

The processes in question are not repairs or alterations within the meaning of subheading 9802.00.50, HTSUS. They are a finishing progression of the manufacturing process started in the U.S. Thus, subheading 9802.00.50, HTSUS, is not applicable. Such lumber when

imported into the U.S. is classifiable under heading 4407, HTSUS, and subject to AD/CVD duties. The transformation issue is not relevant in this case because heading 9802, HTSUS, is not applicable.

Although DOC's AD/CVD determinations exclude certain softwood lumber, they do not exclude softwood lumber under the above-described circumstances.

3. Q. Is United States softwood lumber returned from Canada without having been advanced in value or improved in condition by any process of manufacture or other means while abroad subject to AD/CVD duties?
 - A. United States softwood lumber returned from Canada without having been advanced in value or improved in condition by any process of manufacture or other means while abroad and without having been subject to substitution is not subject to AD/CVD duties.

Claims for American Goods Returned (AGR) under subheading 9801.00.10, HTSUS, have to be supported by the facts and the required documents under the appropriated Customs Regulations (C.R. §10.1).

It is recognized that each claim for AGR (lumber) has unique circumstances. However, a claim under subheading 9801.00.10, HTSUS, has to be appropriately and credibly supported. Lumber that does not meet the requirements of subheading 9801.00.10, HTSUS, is classifiable under headings 4407 or 4409, HTSUS, and is subject to the AD/CVD duties.

4. Q. Is third country softwood lumber imported from Canada subject to the AD/CVD duties?
 - A. This question has two possible scenarios and conclusions:
 1. Third country lumber not further processed in Canada.

If the third country lumber has not been advanced in value or improved in condition by any process and has not undergone substitution while in Canada, it is not subject to the AD/CVD duties. (Sufficient and credible evidence must be provided.)
 2. Third country lumber that has been further processed in Canada.

Third country lumber that has undergone any processing or substitution while in Canada loses its identity as third country lumber and is subject to AD/CVD duties.

5. Q. What is the applicability of the softwood lumber AD/CVD cases to Maritime lumber under the scenarios described below?
- a. Crown timber (logs) harvested in any other province and sent to the Maritime to be sawn into lumber.
 - b. Lumber manufactured in any other province and sent to the Maritime to be further processed.
 - c. Maritime lumber transshipped through other provinces but destined for the U.S.
 - d. Maritime lumber sold to companies in any other province to be further processed and later shipped, in part or in whole, to the U.S.
- A. DOC's instructions require that an original Certificate of Origin issued by the Maritime Lumber Bureau (MLB) be presented for entries claiming an exemption from the CVD case. There is no exemption for Maritime lumber under the AD case. Thus, AD duties are applicable in all the described scenarios.
- a. DOC's instructions are clear on how to treat softwood lumber under scenario "a". The Maritime exemption does not apply to softwood lumber produced in the Maritime Provinces from crown timber harvested in any other province. Thus, CVD duties are applicable.
 - b. Scenario "b" should be considered similar to scenario "a". No exemption allowed. CVD duties are applicable.
 - c. In this scenario, if the lumber is destined for the U.S. and no diversion or substitution has occurred (appropriate proof), it is exempt from CVD. An original Certificate of Origin is required.
 - d. Maritime lumber having been advanced in value or improved in condition by any process in any other province loses its identity as Maritime lumber.
- DOC's instructions on the scope of the subject CVD case do not exempt Maritime lumber under the circumstances of scenario "d". Therefore, Maritime lumber remanufactured in any other province is subject to the CVD.
6. Q. In the case of Maritime lumber, is the Certificate of Origin from the MLB a condition of release?

- A. The original MLB Certificate of Origin is not a condition of release. It does not have to be present at time of Entry, but must be submitted at Entry Summary if the importer claims an exemption from the CVD as Maritime lumber.
7. Q. Are AD/CVD duties applicable to softwood lumber entered under informal entries?
- A. In case of informal entries, a distinction has to be made between commercial shipments and personal use shipments. Only shipments of softwood lumber imported for personal use (use by the importer) do not require payment of AD/CVD duties. Lumber imported on behalf of another individual or company (including a contractor) is subject to AD/CVD duties.
8. Q. Are AD and CVD duties deductible from the price actually paid or payable?
- A. Customs has ruled that AD/CVD duties are Customs duties. (See HQ 543963 dated 9/11/87 as modified by HQ 544722 dated 6-4-91, and HQ 546111 dated 3/1/96.) Thus, they can be deducted from the price paid or payable. However, there are two operative terms that have to be satisfied. The AD/CVD duties have to be **CURRENTLY PAYABLE**, i.e., they must be actually paid and included in the price paid or payable, and they must be **IDENTIFIED SEPARATELY** on the invoice.

Based on the preliminary determination, an importer may elect to bond for the AD/CVD. When an importer elects to bond, the duties are not currently payable and cannot be deducted from the price.

Nevertheless, if the AD/CVD duties are clearly identified separately on the invoice, are included in the price, and in fact paid, Customs can adjust at liquidation for duties included in the price versus final AD/CVD rates.

Note: The importer must provide sufficient and credible evidence that the AD/CVD duties were included in the price and actually paid.

9. Q. Is the cost of the bond for the AD/CVD duties deductible from the price paid or payable?
- A. There is no legal basis to deduct the cost of a bond from the price paid or payable. Thus, it should not be deducted. (See 19 U.S.C. §1401a(b)(3) and (4). See also 19 C.F.R. §152.103(i).)
10. Q. Is Maritime lumber exempt from the AD investigation?
- A. No. Lumber from New Brunswick, Nova Scotia, Prince Edward Island,

and Newfoundland (the Maritime Provinces) is not exempt from the AD investigation. Maritime lumber entered or withdrawn from warehouse for consumption on or after November 6, 2001 is subject to AD duties.

11. Q. Are margin rates applicable according to the exporter/shipper or the manufacturer/producer?

A. Different scenarios can occur in the application of margin rates.

1. If the exporter/shipper has a company specific margin rate, it should be used.
2. If the exporter/shipper does not have a company specific margin rate and the manufacturer/producer **is known**, the margin rate of the manufacturer/producer will apply.
3. If the exporter/shipper does **not** have a company specific margin rate and the manufacturer/producer is **not known**, the “all others” margin rate will apply.
4. If the exporter/shipper does not have a company specific margin rate and the manufacturer/producer is known but also does not have a company specific margin rate, the “all others” margin rate will apply.

Note: It is recognized that the identification or lack of identification of the manufacturer/producer can result in a more beneficial margin rate. Importers are reminded that Customs Regulations require the disclosure and submission of all appropriate information to file a correct and complete entry/entry summary. (See 19 C.F.R. §141.86 and §142.6.)

PART II

On November 6, 2001, the Department of Commerce Published in the Federal Register its preliminary determination in the antidumping duty investigation of certain softwood lumber from Canada (A-122-838). The AD scope exclusion list reflects certain modifications to the exclusion list issued at the time of the preliminary determination in the companion CVD investigation (C-122-839). The AD exclusion list is the current and correct list applicable to both cases (AD & CVD) retroactive to the appropriate effective dates.

Part II of the Q&A paper address issues concerning the scope exclusion list.

1. Q. Which trusses and truss kits are classifiable under subheading 4418.90, HTSUS?

A. Complete and assembled trusses are classifiable under 4418.90. More problematic is the classification of unassembled trusses (kits).

Customs has issued rulings on unassembled trusses. Thus, these rulings should be followed when processing entries of unassembled trusses. (See NY C89668, NY D81970, NY D80342, and NY D87805.) Since each case may present different conditions, it is advisable to request a ruling specific to the importer's circumstances.

In summary, the nature of the product does not allow many parts to be missing or unfinished and still be considered an incomplete or unfinished truss, that is, have the essential character of the complete or finished truss. The only part(s) that may be missing are the metal plates. All the components of the truss must be complete and ready to be assembled without further processing of any kind.
2. Q. What is a "box spring frame", and where is it classifiable?

A. "Box spring frames" are wood frames that form the foundation of a bed box spring. In condition as imported, it has no metal springs, and it does not have the essential character of a bed box spring, i.e., mattress supports of subheading 9404.10, HTSUS.

Assembled "box spring frames" are classifiable under subheading 4421.90.98, HTSUS.
3. Q. How are "box-spring frame kits" of Group B different from "assembled box spring frames" of Group A, and where are the Group B box spring frames classifiable? (Note that Group A refers to those scope excluded softwood lumber products cited in our AD message 1324201 of 11/20/01 (item 2, Group A (3)) and our CVD message 1327201 of 11/23/01 (item 2, Group A (3)); Group B refers to those scope conditionally excluded softwood lumber products cited in such AD message (item 2, Group B (2) and in such CVD message (item 2, Group B (2)).

- A. A “box-spring frame kit” of Group B is an unassembled box spring frame consisting of all the necessary parts to assemble one box spring frame.

A box spring frame is a part of a bed box spring. Thus, the components of an unassembled box spring frame are parts of a part. There is no tariff provision for parts of a bed box spring, and there is no tariff provision for box spring frames. Thus, GRI 2 is not applicable.

The components of an unassembled box spring frame are classifiable separately under the appropriate tariff provision, i.e., 4407, 4409, and 4421. (See HQ rulings HQ 960768 dated 10/23/97 and HQ 960703 dated 8/26/97.) For tariff purposes, it does not matter if the components are packaged together as “kits” or separately. They are always classifiable separately.

Nevertheless, unassembled box spring frames may be excluded from the scope of the subject AD/CVD cases. The criteria that must be met in order to be excluded from the scope is delineated under Group B, item 2. To be excluded from the scope of the subject AD/CVD cases, the “box-spring frame kits” must meet a number of conditions, such as, method of packaging, processing of each component, and size of each component.

Note: Unassembled box spring frames with all the required components packaged together and meeting the established criteria under Group B, item 2 are excluded from the scope of the subject AD/CVD. However, some of the components will be classified under headings 4407 and 4409, HTSUS. This condition will trigger an AD/CVD entry warning.

4. Q. What pallets and pallet kits are classifiable under subheading 4415.20, HTSUS?
- A. Complete and assembled pallets are classifiable under 4415.20, HTSUS. Unassembled pallets (kits) are also classifiable under 4415.20, HTSUS. It is not the usual practice in the pallet trade to market incomplete and unassembled pallets, with the exception of hardware, i.e., nails and screws. Unassembled pallets are classifiable under 4415.20, HTSUS, only if all the components are present and ready, without further processing, to be assembled into pallets.

It should be noted that pallets consist, at a minimum, of two types of components, that is, stringers and top (and bottom) boards. The boards are thin in comparison to the stringers. Certain so called “pallet kits” consisting of only one size lumber components, e.g., 2 x 4 lumber boards, are not recognizable as unassembled pallets, and the square cut lumber “components” are classifiable under 4407, HTSUS.

Many of the pallet components are simply cut to size lumber with square cut ends. Thus, care should be exercised that the exact number of components is present for the type of pallet being imported.

Note: Pallet components are not classifiable under heading 4415, HTSUS. Pallet components may be classifiable under 4407 or 4421, HTSUS.

5. Q. What types of stringers (runners) used in the construction of pallets are excluded from the scope of the subject AD/CVD cases?

A. The subject AD/CVD cases provide for the exclusion of certain products from the scope of these investigations. The excluded products are listed in Groups A and B. Wood stringers (runners) used in the construction of pallets are listed under Group B. (1). However, stringers are excluded from the scope only if they meet the specified requirements. Thus, it is possible (but not likely for this product) that stringers may be classifiable under subheading 4421.90.9840, HTSUS, (subheading 4421.90.9740 under the 2002 HTSUS) and still be subject to AD/CVD duties.

6. Q. How are box spring frame components classifiable if imported separately? Are they excluded from the scope of the AD/CVD cases?

A. As in the case of “box-spring frame kits”, the classification of the components depends on what work, if any, has been performed on them. The possible headings are 4407, 4409, and 4421, HTSUS.

“Radius-cut box-spring-frame components”, specifically side rails and end rails, may be excluded from the scope of the subject AD/CVD cases if they meet the criteria delineated in Group B, item 3 of the scope exclusion list. Particular note should be made to the fact that the both ends of the side rails and end rails must be radius cut. The cuts must be substantial cuts completely rounding one corner at each end of the board.

Based on the criteria of Group B, item 3, certain “radius-cut box-spring-frame components” (side and end rails) classifiable under heading 4421, HTSUS, may not qualify for the AD/CVD exclusion.

7. Q. Are fence pickets excluded from the scope of the subject AD/CVD cases?

A. Group B, item 4 of the AD/CVD exclusion list provides for the exclusion of fence pickets properly classifiable under subheading 4421.90.70, HTSUS. The excluded pickets must meet all the criteria specified under Group B, item 4. Particular attention should be paid to the size requirements. Customs has issued rulings, with size limitations, e.g. 6 feet in length, specifically, dog-eared pickets. (See NY D83522 dated 10/19/99 and NY E86556 dated 10/19/99.)

It is possible to have pickets subject to the AD/CVD duties, but classifiable under 4421.90.70, HTSUS, e.g., pickets over 1 inch in thickness.

8. Q. Which entries covering lumber products will have liquidation suspended?

A. Only entries for merchandise classifiable under one of the specified headings in the scope of the subject cases will have liquidation suspended.

Nevertheless, if the merchandise is known (or reasonably known) to be within the scope of the subject AD/CVD case but not classifiable under one of the specified headings in the scope of the AD/CVD cases, the entry for such merchandise may be held pending the following actions:

1. Customs will advise the Department of Commerce (DOC) of its findings and recommend that the HTSUS heading be included in the scope.
2. If the DOC agrees and amends the scope to include the HTSUS heading(s) in question, liquidation will be suspended on the subject entries and a bond or cash deposit of estimated AD/CVD duties will be required.

REFERENCES:

1. Headquarters' message No. 1249201 dated September 6, 2001 – Instructions on DOC's Notice of Preliminary Affirmative Countervailing Duty Determination of Certain Softwood Lumber Products from Canada (C-122-839)
2. Headquarters' message No. 1324201 dated November 20, 2001 – Instruction on DOC's Notice of Preliminary Determination in the Antidumping Investigation of Certain Softwood Lumber Products from Canada (A-122-838)
3. Headquarters' message No. 1327201 dated November 23, 2001 – Clarification of Message No. 1249201